

Conversely, respondent and its insurance carrier contend the Board should either dismiss this appeal or affirm the July 3, 2003 Order. They argue that claimant has failed to raise an issue that is appealable from a preliminary hearing order. They also argue that the greater weight of the evidence establishes that claimant did not begin receiving medical

treatment on a consistent basis until after January 16, 2003, when she slipped and fell at home. Accordingly, respondent and its insurance carrier argue claimant's present need for medical treatment relates to her fall at home rather than the October 18, 2002 accident at work.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction at this stage of the claim to review the Judge's preliminary hearing finding that claimant's present need for medical treatment is not related to her October 18, 2002 work-related accident but, instead, is directly related to a subsequent accident or accidents?
2. If so, did claimant satisfy her burden and prove that the medical treatment that she now requests is directly related to the October 18, 2002 accident?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds and concludes, as follows:

1. Claimant worked for respondent as a lead person in its Abilene, Kansas, mail room. On October 18, 2002, claimant felt a twinge in her low back while lifting a heavy box at work. Claimant completed her shift but when she went home and sat down she had difficulty getting back up.
2. According to claimant, she did not report the October 2002 lifting incident to her supervisor when it occurred as her supervisor was not there. But within a week of the alleged incident, on October 24, 2002, claimant sought medical treatment from her personal family physician, Dr. J. Steven Schwarting, who prescribed medications. The doctor's October 24, 2002 office notes set forth the following history:

She [claimant] has some pain in her back, she thought it happened last Friday when she was lifting her boxes like she normally does. It was not until that evening that the pain actually came on. She has missed a couple of days of work, she is using some Ibuprofen . . .
3. In January 2003, claimant experienced a second lifting incident at work, which increased her back symptoms. According to claimant, this second lifting incident

made her miss work but it did not permanently worsen her back symptoms. Claimant testified that before this incident she was already taking "a lot of" pain pills.

4. The record is not clear when the January 2003 lifting incident occurred but claimant places it before January 16, 2003, when she slipped at home and fell on ice. According to claimant, the fall did not affect her back symptoms as she landed on her buttocks. Four days after the fall, however, claimant returned to Dr. Schwarting for the first time since October 2002 seeking additional back treatment. The doctor's January 20, 2003 office note reads:

I talked with Tammy, her back she doesn't think is any better, her work needs to have her be able to lift 50 lbs. before she can go back to work. I did confirm that by calling her supervisor, Doris Walker, in the Print Shop at Duckwall-Alco. I am going to give Tammy a Back Care Book which should help her mobilize, strengthen and when she feels like she is ready to return to work she will let me know. I think as other times in the past her healing process may be fairly slow.

Dr. Schwarting's office notes do not mention either the January 2003 lifting incident or the January 2003 slip and fall on ice.

5. Claimant testified that she continued to work following the October 2002 lifting incident without complaining of her back to her supervisor. And despite not seeing Dr. Schwarting between October 24, 2002, and January 20, 2003, claimant is adamant that her back symptoms did not resolve during that period.
6. On January 31, 2003, claimant sought chiropractic treatment. The documents that claimant completed for the chiropractor include a history of back injury from lifting heavy boxes at work on a Friday in October 2002. The documents do not mention a January 2003 lifting incident or the later slip and fall.
7. For preliminary hearing purposes, the parties introduced the deposition testimony from claimant's former supervisor, Doris Walker. Ms. Walker testified that she first learned of claimant's back symptoms on a Monday morning in October 2002. According to Ms. Walker's testimony and her written notes that were exhibits to the deposition, claimant stated that she thought she had hurt her back the preceding Friday but also wondered if her symptoms were also partially related to moving a couch by herself over the weekend. Ms. Walker also testified that in January 2003 claimant complained of hurting her back after falling on icy steps at home.

**CONCLUSIONS OF LAW**

This Board has jurisdiction to review a preliminary hearing finding of whether a worker's then present need for medical treatment was caused by an accident that occurred at work or whether it was caused by an intervening or subsequent accident. The Board has held that the issue is analogous to whether claimant has sustained an accidental injury arising out of and in the course of employment, which is a jurisdictional issue specifically cited in the Workers Compensation Act as being subject to Board review from a preliminary hearing order.<sup>1</sup>

The July 3, 2003 preliminary hearing Order should be affirmed. The Board concludes that claimant has failed to prove that her present need for medical treatment is the result of the alleged October 18, 2002 accident at work. Claimant's contention that her back symptoms did not resolve following the October 2002 lifting incident and that her symptoms were only temporarily exacerbated by the January 2003 lifting incident and the January 2003 slip and fall is not supported by the evidence other than her testimony that has been presented to date. After missing perhaps one or two days of work, claimant was able to work following the alleged October 18, 2002 incident but began missing numerous days from work beginning January 20, 2003, which is only days following the slip and fall. Moreover, the record at this juncture lacks an expert medical opinion that relates claimant's present symptoms to an October 2002 injury.

**WHEREFORE**, the Board affirms the July 3, 2003 Order entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: E. Thomas Pyle, III, Attorney for Claimant  
John R. Emerson, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> See K.S.A. 44-534a.